

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 22, 2016

Elisabeth A. Shumaker
Clerk of Court

ANDREW J. O'CONNOR,

Plaintiff - Appellant,

v.

TOBEY BASSOFF; JOLENE RADOSTIS;
RICK KELLOG; ROBBYN
FERNANDEZ; BRUCE MESSINGER;
RYAN ELEMENTARY SCHOOL;
BOULDER VALLEY SCHOOL
DISTRICT NO. RE2, individually and
severally,

Defendants - Appellees.

No. 15-1493
(D.C. No. 1:15-CV-02121-MJW)
(D. Colo.)

ORDER

Before **TYMKOVICH**, Chief Judge, **BACHARACH**, and **McHUGH**, Circuit Judges.

This matter is before us on Appellant Andrew J. O'Connor's response to the court's order to show cause why this appeal should not be dismissed for lack of appellate jurisdiction. Mr. O'Connor argues that 28 U.S.C. § 1292 provides this court with jurisdiction because the appeal involves the denial of injunctive relief.

Generally, this court's appellate jurisdiction is limited to review of final decisions. 28 U.S.C. § 1291. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute judgment." *Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 204 (1999) (internal quotation omitted). Interlocutory orders

denying injunctive relief are, however, immediately appealable under 28 U.S.C. § 1292(a)(1).

Mr. O'Connor filed his notice of appeal on December 21, 2015 from "the Final Order-Order to Dismiss in Part and to Draw Case entered by the United States District Court for the District of Colorado on 12/3/15, and all adverse rulings made therein." In its Order to Dismiss in Part, the district court dismissed two of Mr. O'Connor's claims as legally frivolous and directed that a third claim proceed. The court did not address injunctive relief. The district court has, on other occasions, addressed Mr. O'Connor's requests for a temporary restraining order or a preliminary injunction. The district court entered orders denying such requests on October 8, October 19, November 3, and November 16, 2015. A magistrate judge also entered an order denying a motion for injunctive relief on December 17, 2015.

The district court's Order to Dismiss in Part is not a final order and did not deny injunctive relief. Mr. O'Connor's notice of appeal was not timely as to the district court's October 8, October 19, November 3, or November 16, 2015 orders denying injunctive relief, Fed. R. App. P. 4(a)(1)(providing that the notice of appeal in a civil case "must be filed with the district clerk within 30 days after entry of the . . . order appealed from"), and the timely filing of a notice of appeal is both mandatory and jurisdictional, *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The magistrate judge's December 17, 2015 denial of injunctive relief is not directly appealable to this court. *See Phillips v. Beierwaltes*, 466 F.3d 1217, 1221 (10th Cir. 2006).

Because the district court has not yet entered a final decision in this case and Mr. O'Connor did not timely appeal the district court's denial of injunctive relief, we lack jurisdiction to consider this appeal.

APPEAL DISMISSED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk